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| In re Application | : |
| Milani, et al. | : |
| Application No. 09/609,016 | : DECISION ON APPLICATION |
| Filed: June 30, 2000 | : FOR PATENT TERM ADJUSTMENT |
| Atty Docket No. 115/575 | : |

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. §1.705(b)," filed April 1, 2005. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to three hundred nine (309) days.

For the reasons set forth below, a decision on the request for reconsideration of the patent term adjustment indicated on the patent is being **HELD IN ABEYANCE** until after the actual patent date.

Applicants are given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicants may seek such reconsideration without payment of the fee. A copy of this decision should accompany applicant's written request for reconsideration.

On December 28, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On April 1, 2005, applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA is three hundred nine (309) days.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of thirty-four (34) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), and forty-three (43) and sixty-seven (67) days, both pursuant to 35 U.S.C. (b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), reduced by applicants' delays of five (5), one hundred fifty-five (155), and ninety-four (94) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and thirteen (13) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). All periods of adjustment have been reviewed and found to be correct.

It is noted that with respect to the sixty-seven (67) days of adjustment, applicants assert that the adjustment should be sixty-eight (68) days. Office records indicate that a final rejection was filed on March 11, 2004, in response to an amendment filed on September 4, 2003. However, applicants state that the amendment was filed by express mail on September 3, 2003. A review of the amendment does not reveal that it was filed express mail, nor have applicants offered any proof to indicate that it was.

In addition, applicants assert additional PTO delay of four hundred thirty-one (431) days for the failure on the part of the Office to issue the patent within three years of its filing. The Office will be able to assess whether or not any additional PTA is accorded once the issue date is established.²

Receipt of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee, and included a Certificate of Mailing dated March 28, 2005.

² Applicants should note that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period of pendency before the Office except for periods excluded under 35 U.S.C. (b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

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for*

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